

B O I E S , S C H I L L E R & F L E X N E R L L P

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September 26, 2011

The Honorable William Alsup
U.S. District Court, Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

Re: Oracle America, Inc. v. Google Inc., No. C 10-3561 WHA

Dear Judge Alsup:

I write to follow up on the parties' exchange of précis submissions last week regarding Google's request (Dkt. No. 450) to file a *Daubert* motion regarding Professor Cockburn's damages report.

On Saturday, September 24, the parties exchanged motions *in limine*. Google's motion *in limine* # 3 raised precisely the issues described in Google's *Daubert* précis; Google's motion *in limine* # 2 raised additional issues relating to Oracle's damages report. Google's decision to challenge Professor Cockburn's damages study *in limine* is consistent with the Court's previous suggestion that it follow this course. *See* 9/15/2011 Tr. at 67:3-7 ("if you want to bring a motion to knock [Oracle's new damages study] out, that should be one of your motions *in limine*.").

Google has now raised, on the merits, all of the issues (and more) that it sought to brief in the proposed *Daubert* motion. Oracle will respond to the *in limine* motions on October 4, the parties will file the motions and oppositions with the Court on October 7, and the parties will argue those motions on October 17.

Oracle respectfully requests that the Court deny as moot Google's précis request for leave to file what would be a duplicative *Daubert* motion filed (as requested by Google) on or after the date when the motions *in limine* will be fully briefed and argued.

Sincerely yours,

/s/ Steven C. Holtzman